

BEFORE THE STATE TAX APPEAL BOARD
OF THE STATE OF MONTANA

JAMES & BARBARA BAIRD,)	DOCKET NO.: PT-1999-15
)	
Appellants,)	
)	
-vs-)	FACTUAL BACKGROUND,
)	CONCLUSIONS OF LAW,
THE DEPARTMENT OF REVENUE)	ORDER and OPPORTUNITY
OF THE STATE OF MONTANA,)	<u>FOR JUDICIAL REVIEW</u>
)	
Respondent.)	

The above-entitled appeal was heard telephonically on July 12, 2000, in accordance with an order of the State Tax Appeal Board of the State of Montana (the Board). The notice of the hearing was duly given as required by law.

Howard A. Card, appearing telephonically on behalf of the appellants, presented evidence and testimony in support of the appeal. The Department of Revenue (DOR), represented telephonically by Appraiser Carolyn Carman, and the Department of Natural Resources (DNRC), represented telephonically by Special Uses Forester Marvin W. Miller, presented testimony in opposition to the appeal. Testimony was presented and exhibits were received prior to the hearing from the appellants and from the Department of Revenue. The Board then took the appeal under advisement; and the Board, having fully considered the testimony,

exhibits, and all things and matters presented to it by all parties, finds and concludes as follows:

STATEMENT OF ISSUE

The issue before the Board in this appeal is the proper valuation of land owned by the State of Montana and leased as a cabin site in accordance with §77-1-208, MCA.

FACTUAL BACKGROUND

1. Due, proper and sufficient notice was given of this matter, the hearing hereon, and of the time and place of the hearing. All parties were afforded opportunity to present evidence, oral and documentary.

2. The property which is the subject of this appeal is leased from the State of Montana and is described as follows:

Lot 5, Echo Lake summer home lot, Section 5, Township 27N, Range 19W, County of Flathead, State of Montana. (Assessor code #DSL3051562).

3. For the 1999 tax year, the DOR appraised the subject leased lot at a value of \$88,837.

4. The lessees, James L. and Barbara Baird, appealed to this Board on January 6, 2000, requesting a reduction in value to \$40,000, stating:

Appraised value is in excess of market value.

5. The appellants did not file an AB 26 form for property review with the DOR.

6. The Board has jurisdiction in this matter, pursuant to §77-1-208 MCA.

APPELLANTS' CONTENTIONS

The appellants presented one exhibit, a one-page, nine-point statement explaining why they believe the assessed valuation of their lease is too high. This document follows:

James L. & Barbara Baird

Docket No. PT-1999-15

We feel the assessed valuation of our lease is too high based on the following.

1. Lease #3052042 adjacent to our property was purchased for \$40,000 in early 1999 including the improvements. This would put the actual value of the property considerably below what we have been assessed.
2. The asking price for privately owned property on the lake in most instances is not in excess of our assessed value. The value of privately owned property should be significantly more than a leased property.
3. The road surface for this lease is gravel road only. This is a negative factor in the valuation.
4. The property is not occupied year round as a permanent residence and is for recreation purposes only. The recreation valuation should be taken into account and not assessed as part of the lease value.
5. The first 100 feet of the shoreline is for public use. This should have a negative effect on the value of the lease property.
6. Taxes for all comparable leases should be fair and comparable. We believe this increase puts in unfair burden on the property.
7. This particular lease is very steep and not completely usable. Access to and use of the lease is restricted. The effect of this should be reduced off the valuation.
8. The large increase in lease rates will make this property very unlikely to be marketable for any reasonable value.
9. We wish to appoint Howard A. Card as our agent to act for us at the telephone hearing on July 12, 2000. His telephone number is (403)752-3686.

/s/ Barbara Baird

Mr. Card testified that the position of the appellants is "pretty much outlined in our presentation" (*Exhibit 1*). He elaborated on some of the points in the exhibit, as follows. Under item 1, "even though the lease next door was

agreed at a value of \$107,000, including the lease, they still, in fact, only paid \$40,000 for the property, including the lease, so that the fair market value of the lease, even though they have agreed to a valuation of the lease, we believe is in excess of what the real fair market value of the lease is. Items 2 and 3 are fairly self-explanatory. Item 4 is, in the Bairds' case, this is a recreational unit, and there are units around the lake occupied on a year-around basis. And theirs is a pretty much summer use only, occasional use in the winter, but very little. So the cost and the value of this, if the value of the lease is left like this, makes the cost of maintaining a summer use residence very high. Item 5 is very self-explanatory...; item 6 is explanatory. Item 7 is one area that we would have liked addressed very carefully in that this particular lease is very steep, and a good deal of the lease is really not usable by the lease users because of the steepness of it. Item 8, we believe that if the lease rates are maintained, that it's very difficult for people to justify the cost of maintaining the property and keeping it so that the value of the lease that they're putting in, the lease rate that's there, is very high in relation to the amount of use that the property gets."

Mr. Card testified that the appellants set their requested land value at \$40,000 because that was the sale price of the adjacent property. He stated that they did not appeal the value of their improvements because they believe that the assessed value of the improvements is close to what they are worth. He also stated that the appellants are "strongly considering listing the property presently to sell. They have not listed it as of this date, but ... they are strongly considering it."

In response to Ms. Carman's question regarding Item 1 of Exhibit 1, Mr. Card testified that for \$40,000, the purchasers of the adjacent property had purchased "everything, including the right to the lease. They didn't pay \$147,000 for the property and the lease. So, if the lease is worth \$100,000, they should have paid \$142,000 for the property even though they agreed that the lease had a value of \$102,000. They still, in fact, only paid \$40,000 for the property, including the right to the lease; so, I think that the \$102,000 is in excess of the real value of the lease." Regarding the unusable area of the subject property, as described in Item 7 of Exhibit 1, Mr. Card testified that he had visited the property, and "if you go from the parking lot down to the house, it's very steep. They've had to build a very steep set of stairs to get

there. That portion of the property is all not usable, and you don't get usable property until you get down to the house." He stated that there are other properties on Echo Lake with areas as steep as the subject property, but there are also "many properties that are not quite as steep." He testified that he believes that "the State of Montana is using a correct system to determine how they value the leases, but I think that in this instance, I don't think that the property would sell for \$90,000... so little of the property, a portion of the property is not usable... I still do believe that it is very steep and at least one-third of the lease is really not usable and should have an adjustment in the lease value to that... I think if you could find a similar property, it would sell for quite a bit less than the \$88,000 appraised valuation that it has." Although Mr. Card had looked at some sales, he stated that he had not analyzed them.

DOR'S CONTENTIONS

Several of the DOR's exhibits which had been sent to the Bairds had not been forwarded by them to Mr. Card. However, he indicated to the Board that he could obtain the documents later, and it would not be necessary to fax them to him at this time. Exhibit A is a statement entitled **"Addressing the Bairds Questions"** that was prepared by Ms.

Carman in response to appellants' Exhibit 1. This document, in pertinent part, follows:

1. Lease #3052042 adjacent to our property was purchased for \$40,000 in early 1999 including the improvements. This would put the actual value of the property considerably below what we have been assessed. **Answer: The \$40,000 was what was paid for the improvements only. DOR's value on that improvements is \$23,840. \$16,160 Amount Paid above and beyond value of improvements. The yearly lease on this lot is \$3,584.98 which is 3.5% of the lots 1997 reappraised value of \$102,428. The lease amount was knowingly agreed to at the purchase of the improvements.**
2. The asking price for privately owned property on the lake in most instances is not in excess of our assessed value. The value of privately owned property should be significantly more than a leased property. We have attached 4 listings. These are asking prices only. **Answer: The DOR has not valued the property using 1999-2000 asking prices. The property was valued by studying the valid sales collected between 1992-1995 (See land value sales sheet). The listings that were provided by the lessee were not as comparable to the property as other listing that are also on the market at a higher value. Examples of some of the sales on Echo lake 1992-1995 (see Echo lake map): A 142' by 150' lot sold for \$90,000 or \$634 per lake front foot, in January 1993. A 154' by 210' lot sold for \$65,000 or \$422 per lake front foot in July 1995. A 200' by 220' lot sold for \$92,500 or \$462 per lake front foot in January 1993. A 192' by 277' lot sold for \$101,325 or \$528 per lake front foot in February 1995. I do not know of any competitive bids for state lease lots in our area, however several lots have changed lessees in the last few years on Echo lake. Examples of the new lessees that have accepted the rental fee agreement based on 1997 reappraisal values: A lot 170 x 275 DOR value \$102,428 lease amt. \$3,584.98. A lot 127 x 191 DOR value \$69,343 lease amt. \$2,427.01.**
3. The road surface for this lease is gravel road only. This is a negative factor in the valuation. **Answer: All side roads around the Echo lake area are gravel. This is common.**
4. The property is not occupied year round as a permanent residence and is for recreation purposes only. The recreation valuation should be taken into account and not assessed as part of the lease value. **Answer: The lease states that it is not intended for year round inhabitation.**
5. The first 100 feet of the shoreline is for public use. This should have a negative effect on the value of the lease property. **Answer: See Dept. of Natural Resources and Conservation handout dated January 14, 1998 highlighted area.**
6. Taxes for all comparable leases should be fair and comparable. We believe ours is very high comparable to other similar leases. **Answer: After careful consideration and research I do not find the land valuation to be in error. Rental rates of leased property are all based on the same criteria. If the Lessee finds the rotated manor (sic) of value application unfair. That is not something I can address as its not my department's area.**
7. This particular lease is very steep and not completely usable. Access to and use of the lease is restricted. The effect of this should be reduced off the valuation. **Answer: This Lot has its parking area at the top of the property – it is more than adequate parking compared to many of the leased lots. The property**

slopes down to the lake as can be seen by the photos. However the steepness is not as great as other leased lots such as lots 14 – 17 of Echo Lake summer home lots. The Slope of this lot is not unusual for Echo lake property. The sale on 1/1993 for \$90,000 is a much steeper almost vertical lot. The lot that sold 1/1995 for \$101,325 is also much steeper. Rutted gravel roads typical to the area access both of these lots. As for the lease restrictions they are part of the rental agreement. The Department of Revenue has appraised lot 5 as a privately owned, fee simple parcel for its owner the State of Montana; the rents received go for the school trust fund revenue.

DOR Exhibit B is a map of the Echo Lake area depicting four sales that occurred between January 1993 and July 1995. The sales information is as follows:

- (1) A 142' by 150' lot sold for \$90,000 or \$634 per lake front foot, in January 1993
- (2) A 154' by 210' lot sold for \$65,000 or \$422 per lake front foot in July 1995
- (3) A 200' by 220' lot sold for \$92,500 or \$462 per lake front foot in January 1993
- (4) A 192' by 277' lot sold for \$101,325 or \$528 per lake front foot in February 1995

Ms. Carman testified that the sales were all deeded properties because "that is the only kind we can use to establish value for properties. We have to look at fee simple properties that were sold in an arm's length situation between a willing buyer and a willing seller to come up with land valuation. We do not treat state leased property any different than fee simple property, because we are appraising it for the State of Montana, who owns it fee simple."

Exhibit B also includes examples of two new leases in which the new lessees have accepted the current rental fee agreement. The lease information is as follows:

(1) A lot 170 X 275 DOR value \$102,428 lease amt. \$3,584.98

(2) A lot 127 X 191 DOR value \$69,343 lease amt. \$2,427.01

Exhibit C is a two-page document. Page 1, entitled "Property Assessment Division Valuation and Assessment Procedures," states the purpose and the procedure for the valuation of Department of State Lands (now DNRC) cabin site leases. Under the "Procedure" section of the document, the following has been highlighted by the DOR: *"The appraiser is responsible for determining a value for cabin sites for each appraisal cycle. The valuation of adjacent land parcels should serve as the basis for valuation of the cabin site acreage."* Page 2 of Exhibit C contains portions of Senate Bill 195 from an unspecified legislative session, with highlighted portions of Section 77-1-208, MCA. In pertinent part, the exhibit follows (highlighted sections are denoted with bold italic type):

Section 9. Section 77-1-208, MCA, is amended to read: **"77-1-208. Cabin site licenses and leases – method of establishing value.** (1) The board shall set the annual fee based on full market value for each cabin site and for each licensee or lessee who at any time wishes to continue or assign the license or lease. *The fee must attain full market value based on appraisal of the cabin site value as determined by the Department of Revenue... The value may be increased or decreased as a result of the statewide periodic revaluation of property pursuant to 15-7-111 without any adjustments as a result of phasing in values* (emphasis supplied)...

Exhibit D is a three-page fact sheet that had been prepared by Jeanne Fairbanks of the DNRC, explaining the history of the cabin site lease program and the various legislative changes in the lease fees. Mr. Miller testified

that "the state legislature set our lease fee rate at five percent of the appraised value of the property and decided that they wanted the DOR to do the appraisals for us rather than DNRC doing the appraisals. They wanted to kind of separate the responsibilities there, and we set the lease fees. Due to the fact that we understand that there is a substantial difference between appraised market value of fee simple land and of leased lands, that five percent lease fee rate was reduced to three and one half percent to account for the fact that this is leased land, and the lessees do have to get permission from the DNRC to do improvements and other things on the property. They don't own the property outright, so there is a reduction in value there that is accounted for in the lease fee. So, presently what we're doing is, we multiply the appraised value that we get from the Department of Revenue by three and one half percent, and that's the annual lease fee for the property." Page three of this exhibit includes a discussion of the 100-foot setback that is referred to in Item 5 of Exhibits 1 and A, and reads, in pertinent part:

100' Setback: All leases have a 100' setback from all bodies of water for placement of improvements other than docks or boat houses. This 100' strip also provides for members of the public to enter state land that borders our subdivisions. The general recreational access law and rules further support this by categorically closing all cabin and homesites to the public for recreational uses. Therefore, the public cannot picnic, camp, fish etc. within this 100' area. The Lessee is the only one that enjoys all rights to the water frontage associated with their lease.

Exhibit E is a computer print-out of sections 77-1-208 through 77-1-211, MCA, relating to cabin site leases. Exhibit F is a memorandum from Jeanne Fairbanks, West Side Supervisor, Special Uses Management Bureau, DNRC, dated January 14, 1998 to the Flathead County Appraisal Office regarding state leases on Rogers Lake. The highlighted section of this memorandum relates to the 100-foot setback, and reads, in pertinent part, as follows (the highlighted area is denoted by bold italic type):

All leases have a 100' setback from all bodies of water for placement of improvements other than docks or boathouses. This 100' strip also provides access for members of the public to enter state land bordering our subdivisions. The general recreational access law and rules further support this policy by categorically closing all cabin and home sites to the public for recreational uses. ***Therefore, the public cannot picnic, camp, fish, etc. within this 100' area. The Lessee is the only one to enjoy all rights to the water frontage associated with their lease.***

Page 2 of Exhibit F lists 15 rules and regulations for cabin sites as approved by the State Board of Land Commissioners on May 13, 1959, and states that failure to comply with the rules "may result in termination of lease."

Exhibit G is a three-page exhibit. Page one is a copy of the property record card for the subject property, indicating a width of 135 front feet on Echo Lake with a depth of 284 feet. Page two shows the calculations used to arrive at the land value of \$88,837. The subject lot's 135 feet of lake frontage is valued at \$685 for the first 100 feet of frontage (\$68,500). The remaining 35 feet is valued

at a residual value of \$415 per lake front foot (\$14,525), for a total of \$83,025. This value is then multiplied by the depth factor of 107%. Ms. Carman explained that the standard lot depth is 250 feet, the subject lot has a usable depth of 284 feet, and the formula for determining the depth value is found in the *Montana Appraisal Manual*. Page A32-9 of this manual, "Lot Depth Valuation Factors," in summary states:

These tables are to be used as guides for calculating values for lots that are either shorter or longer than the standard lot depth in the area...

...Select the actual depth of the lot and follow across to the proper standard lot depth for the area being appraised. The figure encountered is the percentage factor to be applied to the front foot value of the lot. The modified front foot value is then multiplied by the width of the lot. (emphasis added)

...The front foot depth factor is equal to the square root of the ratio of the actual depth to the standard depth. (emphasis added)

Using the above formula results in the following depth factor calculation for the subject property: $?284/250 = ?1.136 = 107\%$. $\$83,025 \times 1.07$ results in a value of \$88,837.

Page three of Exhibit G is a map of Echo Lake summer home lots, indicating the acreage of each lot and the location of the subject Lot 5, published by the State Forestry Department in 1956. The map contains a notation that the usable depth of Lots 1 through 20 is assumed to extend only to the road. Ms. Carman pointed out that, according to the map, the subject property has 296 feet on

the north side and 272 feet on the south side, so the DOR used an average of 284 feet for the lot depth.

DOR Exhibit H is a three-page exhibit of information from the ReMax of Bigfork web page containing recent listings of vacant land properties on Echo Lake and other nearby lakes and rivers. Ms. Carman stated that she offered this exhibit to support the DOR's position that its appraisal is an accurate reflection of market values in the Echo Lake area. These sales listings were not used to value the subject property.

DOR Exhibit I is a copy of the CALP (computer-assisted land pricing) model used for neighborhood 891.FF, the subject neighborhood. Properties included in this neighborhood are located on Echo Lake, Peterson Lake and Abbott Lake, and Ms. Carman testified that these three lakes are connected through waterways. Fourteen sales were included in the table, with only nine being used in land sales analysis. A base rate of \$684 per lake front foot was determined, based on a standard lot size of 100 feet of lake frontage and 250 feet of depth. Ms. Carman testified that the \$1.00 difference between the \$684 per foot for the first 100 feet shown on the CALP table and the \$685 shown on Exhibit G is due to rounding.

Exhibit J contains two photographs, dated April 17, 2000, of lease #3052042, which is adjacent to the subject property and is referred to in Item 1 of Appellants' Exhibit 1. Exhibit K contains four photographs of the subject property, taken on October 13, 1999 and April 17, 2000. Ms. Carman testified that the photographs help demonstrate that the subject lot has a typical slope for Echo Lake lots. She stated that no adjustment had been made to the property for the topography, or steepness, of the lot and that "we have lots that are much steeper than this that have sold with quite high values, and we have a few lots that are less steep than this, but this is pretty average for Echo Lake."

Ms. Carman concluded her presentation by stating, "I stand on the valuation that we have, \$88,837, as being fair market value for this type of property. And in looking at what properties have sold that were of similar topography, size, shape, usability, which you cannot tell from looking at a flat piece of paper on a CALP sheet, I totally stand by our value."

BOARD'S DISCUSSION

The Board has studied the history of the legislation that regulates fees for state cabin site leases, as enacted in 1983 and amended in 1989 and 1993. §77-1-208, MCA states that "The board (of land commissioners) shall set the annual

fee based on **full market value** (*emphasis added*) for each cabin site and for each licensee or lessee who at any time wishes to continue or assign the license or lease. The fee must attain **full market value** (*emphasis added*) based on appraisal of the cabin site value as determined by the department of revenue..." The original legislation, which was enacted by the 1983 legislature as House Bill 391 (Chapter 459), reads, in pertinent part:

AN ACT TO REQUIRE THAT IF THE BOARD OF LAND COMMISSIONERS ADOPTS RULES TO ESTABLISH THE MARKET VALUE OF CABIN SITE LICENSES AND LEASES, IT ADOPT A METHOD OF VALUATION OF CURRENT CABIN SITE LICENSES AND LEASES BASED UPON AN APPRAISED LICENSE OR LEASE VALUE AND A METHOD OF VALUATION OF INITIAL CABIN SITE LICENSES OR LEASES BASED UPON A SYSTEM OF COMPETITIVE BIDDING; AND PROVIDING FOR THE VALUATION, DISPOSAL, OR PURCHASE OF FIXTURES AND IMPROVEMENTS.

WHEREAS, on February 13, 1981, the Board of Land Commissioners proposed to adopt rules concerning surface licenses and leases for the use of state forest lands for recreational cabin sites by private individuals, which rules would have established the market value of recreational cabin site licenses and leases by a system of competitive bidding; and

WHEREAS, the rules would have allowed out-of-state interests and other parties to increase by competitive bidding the cost of current cabin site licenses and leases and would thereby have worked a hardship on or dispossessed current licensees and lessees and were therefore subsequently withdrawn by the Board; and

WHEREAS, the policy of this state for the leasing of state lands as provided in 77-1-202 is that the guiding principle in the leasing of state lands is "that these lands and funds are held in trust for the support of education and for the attainment of other worthy objects helpful to the well-being of the people of this state"; and

WHEREAS, allowing current cabin site licensees and lessees to continue to enjoy the benefits of existing licenses and leases and the benefits of their labor is a worthy object helpful to the well-being of the people of this state in that it promotes continuity in the case of state lands, promotes use of state lands by the public by granting a minimal expectation of continuing enjoyment, and promotes satisfaction with governmental processes.

THEREFORE, it is the intent of this bill to direct that if the Board of Land Commissioners adopts any rules under whatever existing rulemaking authority it may have to establish the market

value of current cabin site licenses or leases, that the Board, in furtherance of the state policy expressed in 77-1-202, adopt a method of establishing the market values of cabin site licenses and leases which would not cause undue disruption to the lives and property of and useful enjoyment by current licensees and lessees.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. **Method of establishing market value for licenses and leases.** (1) If the board adopts, under any existing authority it may have on October 1, 1983, a method of establishing the market value of cabin site licenses or leases differing from the method used by the board on that date, the board shall under that authority establish a method for setting the market value of:

(a) each cabin site license or lease in effect on October 1, 1983, for each licensee or lessee who at any time wishes to continue or assign his license or lease, which method must be **5% of the appraisal of the license or lease value of the property** (*emphasis added*), which value may be increased or decreased every fifth year by 5% of the change in the appraised value..."

Mr. Miller had testified in a previous appeal (*Marilyn A. & Daniel E. Harmon vs. Department of Revenue, PT-1999-19*) that, following the passage of the above legislation, statewide meetings were held with lessees, who expressed their concerns with the 5% fee. This resulted in the reduction to 3.5% (or 70% of the 5%), as implemented by Senate Bill 226 (Chapter 705), passed by the 1989 legislature. As introduced, Senate Bill 226 proposed a reduction of the 5% fee to "1.5% of the appraisal of the cabin site value as determined by the county appraiser." The fiscal note for the bill stated: "The significant difference between the current process and this proposed law is the percentage used to derive the rental. Current law provides that the rental will be **5% of the lease value (3.5% of appraised value)**. The proposed legislation sets the rental

at **1.5% of appraised value.**" (*Emphasis added*) During the February 1, 1989 hearing on Senate Bill 226 before the Senate Committee on Natural Resources, the following exhibit was presented by the bill's sponsor, Senator Matt Himsl:

RENTAL RETURNS ON CABIN SITES ON STATE LANDS

The Forestry Division - Department of State Lands is charged with the responsibility of administering the cabin sites...

According to the Forestry Division, 633 cabin sites have been identified on state lands. Almost all of these sites are in areas west of the Continental Divide... All of the identified state land cabin sites were under lease under the old law.

The 1983 Legislature passed HB 391 which instructed the Board of Land Commissioners to change the method of valuing cabin site licenses and leases after October 1, 1983, to:

(a) each cabin site license or lease in effect on October 1, 1983, for each licensee or lessee who at any times wishes to continue or assign his license or lease, which method must be **5% of the appraisal of the license or lease value of the property...** (*Emphasis added*)

The problem surfaced when the department began to implement the 1983 law in 1987 and began issuing notices that the rental fees would be **5% of the appraised value of the land, interpreting lease value to be market value.** (*Emphasis added*) That judgment shot the leases which had been \$150 a year up to \$2,300 a year, in some cases. A storm of protests from the lessees got the department to reconsider and **the Board determined that the "lease value" would be 70% of the appraised market value, then applied the 5%.** (*Emphasis added*) The method still drove the leases sky high and brought into play the appraisal values which the lessees protested. The department appraisers then re-visited the sites and began making adjustments, some of the reappraisals dropped as much as \$10,000. There seems to have been no standard judgment. As an example a lease, which about five years ago was \$50, went up to \$150 and then went up to \$2,300, then dropped \$910 a year. This explains why people are upset.

Senate Bill 226 would be a simple and uniform procedure: The County appraiser, who already goes on the property to appraise the improvements, would appraise the land, just as he does the neighbor. **Since the lessee does not have the rights of the fee-simple landowner, and since the state reserves a "public corridor" on the beach, the lessee does not have a private beach and adjustments in value would be made accordingly.** (*Emphasis added*)

Then if the rental fee would be 1.5% of the appraised value, the lessee would be paying about the same as his neighbor pays in taxes to support the government. However, in this case of state lands, it would go to the state elementary and secondary school funds.

If the lessee didn't like the appraisal value, he would have the same appeal structure as any other landowner and the system would be uniform."

Senator Hims1 testified that "the 1.5% figure is arbitrary but the state will find that the total tax runs between 1.4 and 1.8 of the market value." During the committee's executive action on the bill, 1.5% was amended to 2%. As amended, the bill was transmitted to the House and was heard by the House Taxation Committee on March 31, 1989. During the hearing an amendment was proposed to return the fee to the original 5%, but the amendment failed. The committee passed the bill with the 2% rate to the House floor for action, where it was amended to 3.5% and passed. The joint House/Senate conference committee considering the bill's amendments allowed the 3.5% to remain, and the final bill was passed with that percentage. The joint conference committee also added a provision to the bill for a minimum fee, so the final language of the relevant section reads as follows: §77-1-208, MCA, 1 (a)...The fee must be **3.5%** of the appraisal of the cabin site value as determined by the department of revenue **or \$150, whichever is greater...**"
(Emphasis added)

Senate Bill 424 (Chapter 586), passed by the 1993 legislature, amended §77-1-208 to eliminate the 3.5% annual fee, substituting the language that is presently in statute:

"(1) The board shall set the annual fee **based on full market value** for each cabin site... The fee must **attain full market value** based on appraisal of the cabin site value as determined by the department of revenue." (*Emphasis added*) An attempt was made in the Senate Taxation Committee to restore the language to 3.5%, but the amendment was defeated. The statute has not been further amended since 1993.

The applicable Administrative Rules of Montana state:
36.25.110 MINIMUM RENTAL RATES (6)(a) Effective March 1, 1996, and except as provided in (b), the minimum rental rate for a cabinsite lease or license is **the greater of 3.5% of the appraised market value of the land**, excluding improvements, as determined by the department of revenue pursuant to 15-1-208, MCA, **or \$250**. (*emphasis added*) (b) For cabinsite leases or licenses issued prior to July 1, 1993, the minimum rental rate in (a) is effective on the later of the following dates: (i) the first date after July 1, 1993, that the lease is subjected to readjustment pursuant to the terms of the lease, or the first date after July 1, 1993, of lease renewal, whichever date is earlier; or (ii) March 1, 1996. (c) Until the minimum rate in (a) becomes applicable, the minimum rate is the greater of 3.5% of the appraised market value of the land, excluding improvements, as

determined by the department of revenue pursuant to 15-1-208, MCA, or \$150.

The Board recognizes the valid concern that potential buyers of leased properties may be deterred by probable future increases in lease fees. The Montrust Supreme Court decision (*Montanans for the Responsible Use of the School Trust v. State of Montana, ex rel. Board of Land Commissioners and Department of Natural Resources and Conservation, 1999 Mont. 263; 989 P.2d 800*) was filed by a citizens' action group, *Montanans for the Responsible Use of the School Trust*, against the Montana Board of Land Commissioners and the Department of Natural Resources and Conservation, challenging fourteen school trust lands statutes, including §77-1-208, MCA, relating to cabin site leases. The decision, in pertinent part, states: "¶26 The District Court (of the First Judicial District) ruled that §77-1-208, MCA did not violate the trust because it requires that full market value be obtained. However, the District Court found that the Department had a policy of charging a rental rate of 3.5% of appraised value (hereafter, the rental policy) and that Montrust had introduced an economic analysis of cabin site rentals showing that the rental policy's 3.5% rate was 'significantly below a fair market rental rate.' The District Court concluded that the rental

policy violated the trust's constitutional requirement that full market value be obtained for school trust lands... ¶31...we conclude that the rental policy violates the trust... In the present case, the trust mandates that the State obtain full market value for cabin site rentals. Furthermore, the State does not dispute the District Court's determination that the rental policy results in below market rate rentals. We hold that the rental policy violates the trust's requirement that full market value be obtained for school trust lands and interests therein."

Future large increases in lease fees as a result of the Montrust suit may have results that are unfavorable to present leaseholders, including fewer potential buyers for their properties and declining values of their improvements. Two previous Board decisions relevant to these concerns are *DOR v. Louis Crohn, PT-1997-158*, and *DOR v. Burdette Barnes, Jr., PT-1997-159*. In both instances, the Board stated that "the improvements that are located on this lot are not a part of the appeal before the Board. It is arguable that the **value of the improvements has been impacted by the increasing lease fee to a point where they are not attractive on the market.** The testimony of other lessees in other appeals that have in fact been attempting to sell the improvements and have not received a great amount of

interest from potential purchasers, might be indicative of the fact that **potential buyers are aware of the amount of the annual fee and believe they must be compensated by a lower purchase price for the improvements.**" (*Emphasis added*) The appellants in this case, as in the previously cited appeals, only contested the value of the land.

The DOR's statutory mission, pursuant to §15-8-111, MCA and §77-1-208, MCA, is to arrive at market value, or what a property would sell for on the open market. The CALP table for neighborhood 891.FF (*Exhibit I*) indicates a base price of \$684 per front foot for a 100 foot by 250 foot lot, with an adjusted rate of \$415 per front foot. The subject lot, with 135 front feet, is valued at \$685 per front foot for the first 100 feet (\$68,500) and \$415 per front foot for the remaining 35 feet (\$14,525), for a total of \$83,025, or an average of **\$615** per front foot. This amount has been adjusted by the 107% depth factor to arrive at the total land value of \$88,837.

Comparable sales presented by the DOR are summarized in the following table:

Sale No.	Sale Date	Size of Lot	Sale Price	Price per f.f.	Time-adjst. price per f.f.
1	1/93	142 x 150	\$90,000	\$634	\$849
2	7/95	154 x 210	\$65,000	\$422	\$446
3	1/93	200 x 220	\$92,500	\$462	\$620
4	2/95	192 x 277	\$101,325	\$528	\$583

The average time-adjusted price per front foot for the DOR's four comparable sales is **\$624.50**, which is comparable to the **\$615** per front foot value of the subject lot. Ms. Carman presented several current sales (*Exhibit H*) as "supplemental data, substantive evidence," in support of the DOR value. These include sales of two half-acre lots on Echo Lake, each with 100 feet of waterfront, that sold for \$79,000 each, or \$790 per front foot. The Board is satisfied that the DOR has arrived at a valid indicator of market value for the subject lot.

The appellants presented no comparison sales of vacant properties to support their contention that the property's assessed value was too high, other than the \$40,000 sale of the adjacent land with improvements in 1999. However, the purchasers of this property had agreed to the annual lease payment of \$3,584.98, which is 3.5 per cent of the lot's 1997 reappraised value of \$102,428. This value is comparable to that of the subject property.

Although the appellants stated that "the value of privately owned property should be significantly more than a leased property" (*Item 2, Appellants' Exhibit 1*), Montana statutes require that leased property be appraised at full market value (§77-1-208, MCA). The DOR cannot make any distinction between fee simple and leased property when

determining its value. Mr. Miller had testified in the appeal previously cited, *Marilyn A. & Daniel E. Harmon vs. DOR, PT-1999-19*, that in 1983 the legislature set the lease fee values at 5% of the lease/license value of the property. The DNRC held statewide meetings with the lessees regarding the fee, and lessees protested that "it wasn't fair to pay 5% of the appraised value because these were leaseholds; it's not fee simple property; they don't own it; they don't have controlling rights; and they can't do whatever they please out there without getting permission from the state." Through negotiations, it was determined that the appraised value would be 70% of the 5%, resulting in the 3.5% presently being used, according to Mr. Miller. He further testified, "we devalued the property values basically by 30%. That was essentially set into law in 1989 by Senate Bill 226, passed by the legislature. The lease rate was set at 3.5% to account for the lease value, and so **the law itself is factored to account for the fact that this is leased property.**" (emphasis added)

The Board believes that the DOR has adequately responded, in its Exhibit A, to each of the concerns expressed by the appellants in their Exhibit 1. The appellants did not present sufficient evidence to support their requested value.

CONCLUSIONS OF LAW

1. The State Tax Appeal Board has jurisdiction over this matter. **§15-2-302 MCA and §77-1-208, MCA.**

2. **§15-8-111, MCA. Assessment - market value standard - exceptions.** (1) All taxable property must be assessed at 100% of its market value except as otherwise provided.

3. **§77-1-208, MCA. Cabin site licenses and leases--method of establishing value.** (1) The board shall set the annual fee based on full market value for each cabin site and for each licensee or lessee who at any time wishes to continue or assign the license or lease. The fee must attain full market value based on appraisal of the cabin site value as determined by the department of revenue...The value may be increased or decreased as a result of the statewide periodic revaluation of property pursuant to 15-7-111 without any adjustments as a result of phasing in values. An appeal of a cabin site value determined by the department of revenue must be conducted pursuant to Title 15, Chapter 2.

4. It is true, as a general rule, that the appraisal of the Department of Revenue is presumed to be correct and that the taxpayer must overcome this presumption. The Department of Revenue should, however, bear a certain burden of providing documented evidence to support its assessed values. (Western Airlines, Inc., v. Catherine Michunovich et

al., 149 Mont. 347, 428 P.2d 3, (1967).

5. The Board concludes that the Department of Revenue has properly followed the dictates of **§77-1-208 (1), MCA**, in assigning a market value to the subject property for lease fee purposes.

6. The appeal of the taxpayers is hereby denied and the decision of the Department of Revenue is affirmed.

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ORDER

IT IS THEREFORE ORDERED by the State Tax Appeal Board of the State of Montana that the subject land shall be entered on the tax rolls of Flathead County by the Assessor of that county at the value of \$88,837 for the land as determined by the Department of Revenue. The appeal of the lessees is therefore denied.

Dated this 27th day of July, 2000.

BY ORDER OF THE
STATE TAX APPEAL BOARD

(S E A L)

GREGORY A. THORNQUIST, Chairman

JAN BROWN, Member

JEREANN NELSON, Member

NOTICE: You are entitled to judicial review of this Order in accordance with Section 15-2-303(2), MCA. Judicial review may be obtained by filing a petition in district court within 60 days following the service of this Order.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 27th day of July, 2000, the foregoing Order of the Board was served on the parties hereto by depositing a copy thereof in the U.S. Mails, postage prepaid, addressed to the parties as follows:

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DONNA EUBANK
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